

6
No. 2439

United States
Circuit Court of Appeals

For the Ninth Circuit.

FRANK M. PINDEL,

Petitioner,

vs.

NORMAN J. HOLGATE, as Trustee in Bankruptcy
of the Estate of FRANK M. PINDEL,
Bankrupt, and the BANK OF NEZ PERCE,

Respondents.

Additional Transcript of Record on
Petition for Revision

Under Section 24b of the Bankruptcy Act of Congress,
Approved July 1, 1898, to Revise, in Matter of
Law, Certain Orders of the United States
District Court for the Central
District of Idaho.

Filed

SEP 21 1914

F. D. Monckton,
Clerk.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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[Names and Addresses of Attorneys.]

EUGENE O'NEILL, Lewiston, Idaho,
Attorney for Respondent, Bank of Nez
Perce.

BEN F. TWEEDY, Lewiston, Idaho,
Attorney for Bankrupt, Frank M. Pindel.

FINIS BENTLEY, Lewiston, Idaho,
Attorney for Norman J. Holgate, Trustee.

Bankrupt's Exhibit 23.

*In the District Court of the United States for the
Northern Division, District of Idaho.*

IN BANKRUPTCY.

In the Matter of FRANK M. PINDEL,
Bankrupt.

[Affidavit of Douglas V. Dowd.]

At Nez Perce, in said District of Idaho, on the 8th day of February, A. D. 1911, came Douglas V. Dowd, of Nez Perce, in the County of Nez Perce, and State of Idaho, as Cashier of the Bank of Nez Perce, and made oath and says: That he is the Cashier of the Bank of Nez Perce, a corporation incorporated by and under the laws of the State of Idaho, and carrying on business at Nez Perce, in the County of Nez Perce and State of Idaho, and that he is duly authorized to make this proof by said Bank of Nez Perce, and says that the said Frank M. Pindel, the person by whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition and still is justly and truly indebted to said

Bank of Nez Perce in the sum of Thirty-nine Hundred Twelve and 14/100 (\$3,912.14) Dollars, that the consideration of said debt is as follows, monies borrowed from time to time of said Bank and for which a note was given since reduced to judgment in the sum of \$5,382.28 including costs, that no part of said judgment has been paid (except \$1956.25), the said judgment was entered in a case wherein said Bank of Nez Perce was plaintiff and said Frank M. Pindel and Sarah E. Pindel were defendants, upon a joint note executed by them to said Bank of Nez Perce, that there are no offsets, or counterclaims to the same and that said corporation, Bank of Nez Perce, has not, nor has any person by its order to the knowledge or belief of deponent had or received any manner of security for said debt whatever. [1*]

DOUGLAS V. DOWD, (Seal)

As Cashier of said Bank of Nez Perce, a Corporation.

Subscribed and sworn to before me this 8th day of February, A. D. 1911.

[Seal]

THOMAS M. ROBERTS,

Notary Public in and for Nez Perce County, in the State of Idaho.

My notarial commission expires Dec. 24, 1914. [2]
In the District Court of the United States for the Northern Division, District of Idaho.

IN BANKRUPTCY.

In the Matter of FRANK M. PINDEL,

Bankrupt.

*Page-number appearing at foot of page of original certified Record.

To Eugene O'Neill, of Lewiston, Idaho.

I, Douglas V. Dowd, as Cashier of Bank of Nez Perce, of Nez Perce, in the County of Nez Perce and State of Idaho, being duly authorized, do hereby authorize you, or any one of you, to attend the meeting or meetings of creditors of the bankrupt aforesaid at a court of bankruptcy, wherever advertised or directed to be holden, on the day and at the hour appointed and notified by said court in said matter, or at such other place and time as may be appointed by the Court for holding such meeting, or meetings, or at which such meeting or meetings, or any adjournment or adjournments thereof may be held, and then and there from time to time, and as after there may be occasion, for me and my name to vote for or against any proposal or resolution that may be then submitted under the acts of Congress relating to bankruptcy and in the choice of trustee or trustees of the estate of the said bankrupt, and for me to assent to such appointment of trustee; and with like powers to attend and vote at any other meeting or meetings of creditors, or sitting or sittings of the Court, which may be held therein for any of the purposes aforesaid; also to accept any composition proposed by said bankrupt in satisfaction of his debts, and to receive payments of dividends and of money due me under any composition, and for any other purpose in my interest [3] whatsoever, with full power of substitution.

In witness whereof I have hereunto signed my

name and affixed my seal the 8th day of February,
A. D. 1911.

DOUGLAS V. DOWD, (Seal)

As Cashier of Said Corporation.

Signed, sealed and delivered in presence of

THOMAS M. ROBERTS,

Acknowledged before me this 8th day of February,
A. D. 1911.

[Seal]

THOMAS M. ROBERTS,

Notary Public in and for Nez Perce County, in the
State of Idaho.

[Endorsed]: In the District Court of the United
States for the Northern Division, District of Idaho.
In the Matter of Frank M. Pindel, Bankrupt. In
Bankruptcy. Filed the 9th day of February, A. D.
1911, at 5 o'clock P. M. G. Orr McMinimy, Referee.
"Bankrupt's Exhibit Twenty-three" for Identifica-
tion. Admitted in Evidence. G. Orr McMinimy,
Referee. [4]

*In the District Court of the Second Judicial District
of the State of Idaho, County of Nez Perce.*

BANK OF NEZ PERCE,

Plaintiff,

vs.

F. M. PINDEL and SARA E. PINDEL,

Defendants.

Judgment on Verdict.

This day this action came on regularly for trial,
the said parties appeared by their attorneys, E.

O'Neill, counsel for the plaintiff, and I. N. Smith for the defendants. A jury of twelve persons was regularly impaneled and sworn to try said action. Witnesses on the part of plaintiff and defendant were sworn and examined. After hearing the evidence, the arguments of counsel and instructions of the Court, the jury retired to consider their verdict and subsequently returned into court, with the verdict signed by the foreman, and, being called, answered to their names, and say:

We, the jury, duly sworn and impaneled to try the above-entitled cause, for our verdict say: that we find in favor of the plaintiff and against the defendants, F. M. Pindel and Sara E. Pindel in the sum of \$3,635.16.

CHARLES HILL,

Foreman.

Wherefore, by virtue of the law, and by reason of the premises aforesaid, it is ordered and adjudged that said plaintiff have and recover from said defendants the sum of Thirty-six Hundred Thirty-five 16/100 Dollars, with interest thereon at the rate of seven per cent per annum from date hereof until paid, together with said plaintiff's costs and disbursements incurred in this action amounting to the sum of Seventeen Hundred Forty-seven and 12/100 Dollars. [5]

WITNESS, Hon. EDGAR C. STEELE, Judge of the Second Judicial District Court, and the hand and

the seal of the Clerk thereof, this 15th day of Feby.,
A. D. 1909.

[Seal]

W. L. GIFFORD,

Clerk.

By C. E. Monteith,

Deputy.

No. 1829. In the District Court of the Second
Judicial District of the State of Idaho, in and for
the County of Nez Perce. Bank Nez Perce, Plain-
tiff, vs. F. M. Pindel and Sara E. Pindel, Defendant.
Judgment on Verdict. Filed the 15th day of Feby.,
A. D. 1909. W. L. Gifford, Clerk. By C. E. Mon-
teith, Deputy. [6]

[Exhibit No. 17] Judgment Docket District Court, Second Judicial District, Nez Perce County, Idaho.

No. of Cause and Page of
Judgment Book
No. 1829 page 199

Judgment Debtor
Pindel, F. M. and
Sara E.

Judgment Creditor
Bank Nez Perce

Items of
Judgment
Judgment
Costs

Amount
Dollars Cents
3635 16
1747 12
5382 28

When Rendered
Month Day Year
Feb. 15 1909

Appeal Taken
Month Day Year

Judgment of Appellate Court

Execution Issued		Execution Returned		Amount Satisfied	
Month	Day Year	Month	Day Year	Dollars	Cents
Mar.	8 1909	Apr. 13	1909	131	50
Dec.	6 "	Apr. 21	1909	1956	25

REMARKS.

Receipt E. O'Neill.
Rec'd & Docketed Feb. 15, 1909.
Amount due \$3478.88.

State of Idaho,
County of Nez Perce,--ss.

I, J. R. Lydon, Clerk of the District Court of the Second Judicial District of the State of Idaho, in and for Nez Perce County, do hereby certify that the above and foregoing, is a full, true and correct transcript of the original Judgment Docket of said District Court, in and for Nez Perce County, in the case of Bank of Nez Perce, Plaintiff, and F. M. Pindel and Sarah E. Pindel, Defendants.

Attest my hand and the seal of said Court this 14th day of June, 1913.

J. R. LYDON, Clerk.
C. E. Monteith, Deputy.

Judgment Docket, Vol. 7, Page 199.

[7]

[Endorsed]: No. 378. Transcript of Judgment Docket from Second Judicial District Court, Nez Perce County, Idaho. F. M. and Sarah E. Pindel, Judgment Debtor. Judgment Docketed ———, 191——. Filed the 28th day of March, 1914. A. L. Richardson, Clerk U. S. District Court.

“Exhibit Seventeen.” Bank of Nez Perce. G. Orr McMinimy, Referee.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 2439.

FRANK M. PINDEL,

Petitioner,

vs.

NORMAN J. HOLGATE, as Trustee in Bankruptcy of the Estate of FRANK M. PINDEL, Bankrupt, and the BANK OF NEZ PERCE,

Respondents.

In the Matter of FRANK M. PINDEL,

Bankrupt.

Praeipie for Additions to Transcript of Record.

To the Clerk of the United States District Court,
District of Idaho.

Bank of Nez Perce, one of the respondents above named, hereby requests and directs that you furnish to the Clerk of the above-named United States Circuit Court of Appeals at San Francisco, California, the following portions of the evidence in the above-entitled cause, being portions of the evidence introduced at the hearing or a part of the record made at

the hearing of the said cause before the Referee in Bankruptcy, G. Orr McMinimy, at Ilo, Idaho, and made use of by the said District Court in reviewing the decision of the said Referee at the May, 1914, Term of the said Court, Central Division, District of Idaho, to wit:

1. The affidavit of the printer showing that the Notice of Sale of the real estate was published in the "Nez Perce Herald" from March 6th, to April 3d of year 1913, being exhibit "C" in exhibit "G," Return of Sale of Real Estate by Trustee.

2. The claim of Bank of Nez Perce, being Bankrupt's Exhibit 23.

3. Judgment of District Court of the Second Judicial District of the State of Idaho, in and for Nez Perce County, in case entitled, Bank of Nez Perce, a Corporation, Plaintiff, vs. Frank M. and Sarah E. Pindel, His Wife, Defendants. Copy attached and served herewith for identification. [8]

4. Judgment Docket District Court of the Second Judicial District of the State of Idaho, in and for Nez Perce County, in same case last above mentioned, at page 199 said Judgment Docket. Copy attached, except Clerk's Certificate, and served herewith for identification.

EUGENE O'NEILL,

As Attorney for Respondent, Bank of Nez Perce.

Due service of the foregoing praecipe with exhibits "Judgment" and "Judgment Docket" attached by

copy handed to me this 18th day of August, 1914, at Lewiston, Idaho, is hereby admitted.

BEN F. TWEEDY,

As Attorney for Bankrupt, Frank M. Pindel.

FINIS BENTLEY,

Attorney for Norman J. Holgate, Trustee.

[Endorsed]: Filed Aug. 20, 1914. A. L. Richardson, Clerk. [9]

**[Certificate of Clerk U. S. District Court to
Additional Transcript of Record.]**

*In the District Court of the United States for the
District of Idaho, Central Division.*

In the Matter of FRANK M. PINDEL,
Bankrupt.

I, A. L. Richardson, Clerk of the District Court of the United States for the District of Idaho, do hereby certify that the foregoing transcript of pages from 1 to 10, inclusive, contain true and correct copies of Bankrupt's Exhibit 23, Judgment of District Court of the Second Judicial District of the State of Idaho, Judgment Docket District Court of the Second Judicial District of the State of Idaho, Nez Perce County, and Praecipe for Additional Transcript, in the above-entitled matter as the same appear of record and on file in my office.

I further certify that the cost of the record amounts to the sum of \$5.00 and that the same has been paid by respondent, Bank of Nez Perce.

Witness my hand and the seal of said court affixed
at Boise, Idaho, this 20th day of August, 1914.

[Seal]

A. L. RICHARDSON,

Clerk. [10]

[Endorsed]: No. 2439. United States Circuit
Court of Appeals for the Ninth Circuit. Frank M.
Pindel, Petitioner, vs. Norman J. Holgate, as Trustee
in Bankruptcy of the Estate of Frank M. Pindel,
Bankrupt, and the Bank of Nez Perce, Respondents.
Additional Transcript of Record on Petition for Re-
vision Under Section 24b of the Bankruptcy Act of
Congress Approved July 1, 1898, to Revise, in the
Matter of Law, Certain Orders of the United States
District Court for the Central District of Idaho.

Received and filed September 2, 1914.

FRANK D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

